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Date of Decision: 21-11-95

Special Civil Application No.7009 of 1995

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mr.M.H.Shaikh, learned counsel for the petitioner.

Mr.V.B.Patel, learned senior counsel with Mr.Deepak V.Patel, learned counsel for the respondent No.1.

Mr.D.S. Vasavada, learned counsel for the respondent No.2.

The respondent No.3-Industrial Court concerned is a formal party and was not entered appearance.

Coram: (M.R. Calla, J.)

Date:21-11-95

ORAL JUDGMENT:

1. Rule. Mr.V.B.Patel, and Mr.D.S.Vasavada, learned counsel, waive service of rule on behalf of the respondents.

2. On the request of the parties, the matter is taken up for final hearing today.

3. This Special Civil Application has been filed by one Raghuvir Prasad Mali representing himself as the Secretary of Maha Gujarat Mill Mazdoor Union, Ahmedabad against the General Manager, Arvind Mills Ltd. and the Secretary, Textile Labour Association, Bhadra, Ahmedabad. The petitioner seeks the issue of a writ for quashing and setting aside the order passed by the Industrial Tribunal for State of Gujarat at Ahmedabad on 15-4-95 recording amicable settlement as per the Memorandum of settlement and the Award has been passed in terms of the Memorandum of settlement, which is duly signed by and on behalf of the Textile Labour Association and the Arvind Mills Ltd.

4. On 2-2-95 the respondent-Company had given a notice under S.42 (1) of the Bombay Industrial Relations Act, 1946 (herein-after referred to as "the B.I.R.Act") with regard to changes. Conciliation proceedings failed on 23-3-95, against which Reference was made on 30-3-95. On 15-4-95 the Industrial Court recorded the settlement. This settlement recorded by the Industrial Court in terms of the Memorandum of settlement and the Award passed accordingly on 15-4-95 in Reference (IC) No.67 of 1995 by the Industrial Court at Ahmedabad have been challenged by the Maha Gujarat Mill Mazdoor Union through the Secretary Raghuvir Prasad Mali.

5. Mr.Patel appearing on behalf of the respondent No.1 at the very threshold has challenged the locus standi of the present petitioner-Union to file and maintain this Special Civil Application. It may be stated at the very outset that it is common case of the parties that the petitioner-Union is not the representative of the employees and the only recognized representative Union is the respondent No.2 i.e.. The Textile Labour Association. On this factual premises the preliminary objection raised by Mr. Patel is that the petitioner-Union has no right to challenge the settlement recorded by the Industrial Court and it is not open for the petitioner-Union to challenge the impugned Award passed in terms of the recorded settlement as per the Memorandum.

6. Mr.Shaikh referred to S.42(1) of the B.I.R.Act and has submitted that the settlement has been recorded without following the provisions of S.42 and he invited my attention to the language of S.42 wherein the words "representative of employees" have been used. Section

42(1) of the B.I.R.Act is reproduced as under:

"42(1). Any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. He shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. He shall also affix a copy of such notice at a conspicuous place on the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any particular case."

The argument raised by Mr. Shaikh with reference to S.42 is that the respondent-Company while intending to effect change in respect of an industrial matter specified in Schedule II has to give notice of such intention in the prescribed form to the representative of the employees and his further contention is that no such notice was given to the petitioner-Union. The term "representative of employees" has been defined in S.3(32) of the B.I.R.Act. The same is reproduced as under:

"3 (32) 'representative of employees' means a representative of employees entitled to appear or act as such under Section 30"

Accordingly to understand the correct import of the words "representative of employees" within the meaning of B.I.R. Act, we have to advert to the provisions of S.30 of the same Act. S.30(i) to (vi) are reproduced as under:

"Subject to the provisions of section 33-A, the following shall be entitled to appear or act in the order of preference specified as the representative of employees in an industry in any local area-

(i) a Representative Union for such industry;

(ii) Qualified or Primary Union of which the majority of employees directly affected the change concerned are members;

(ii) any Qualified or Primary Union in respect of such industry authorised in the prescribed manner in that behalf by the employees concerned;

(iv) the Labour Officer if authorised by the employees concerned;

(v) the persons elected by the employees in accordance with provisions of section 28 or where the proviso to sub-section (1) thereof applies, the employees themselves;

(vi) the Labour Officer:"

It would thus appear from the provisions of S.30 that a representative Union for such industry is first in the order of preference so as to be entitled to appear and act as the representative of employees in an industry in any local area. There is no dispute that respondent No.2 i.e. Textile Labour Association is the representative Union for this industry and the present petitioner-Union not being a representative Union does not fall in any of the preferences under S.30.

7. Besides this, Mr. Patel also invited my attention to the provisions of S.27A, which is reproduced as under:

"27A. Save as provided in sections 32,33 and 33A no employee shall be allowed to appear or act in any proceeding under this Act except through the representative of employees."

From the very language employed in S.27A it is clear that no employee shall be allowed to appear or act in any proceedings under this Act except through the representative of employees. Such representative of employees is the respondent No.2 in the case at hand and it is not even the claim of the petitioner- Union that it is the representative of employees for the purpose of the B.I.R.Act in the industry concerned.

8. Mr.Patel has also invited my attention to the provisions of S.115A of the very same Act, which is reproduced as under:

"115A. If any agreement is arrived at between an employer and a representative Union who are parties to any industrial dispute pending before an Arbitrator, Wage Board, Labour Court or Industrial Court, the order, decision or award in such proceeding shall be made in terms of such agreement, unless the Arbitrator, Wage Board, Labour Court or Industrial Court, is satisfied that the agreement was in contravention of any of the

provisions of this Act or the consent of either party to it was caused by mistake, misrepresentation, fraud, undue influence, coercion or threat."

Accordingly if any agreement is arrived at between the employer and the representative Union, who are parties to any industrial dispute pending before any Industrial Court, the Award in such proceeding has to be made in terms of such agreement unless the Industrial Court is satisfied that the agreement is in contravention of any of the provisions of this Act or the consent of either party to it was caused by mistake, misrepresentation, fraud, undue influence, coercion or threat. It is not the case of the petitioner-Union that the settlement arrived at, in any way contravenes the provisions of S.115A, rather it is alleged that the settlement has been recorded with the consent of the representative Union.

9. Mr. Patel has placed reliance on a Division Bench decision of this Court rendered in the case of Shrivankumar v. The Arvind Mills, reported in 1985(2) G.L.R. 767 and it has been submitted that in this case, even the vires of S.27A were challenged and the Court has held that depriving individual employees to appear in proceedings under the Act, where representative Union enters appearance, is not violative of Articles 14, 19 and 21 of the Constitution of India. An individual person, irrespective of his being an employee, may be permitted to appear in any proceedings on behalf of employer or a representative Union, the Labour Court or the Industrial Court in the interest of justice, except in those proceedings, where representative Union has appeared as representative of the employees. In the instant case, the representative Union had entered appearance as the representative of the employees and, therefore, the grievance of the petitioner that the present petitioner-Union had not been called upon in the proceedings and that no notice had been given cannot be sustained in the eye of law.

10. The further grievances, which have been raised, that the notice was not displayed or affixed on the Notice Board and that the dispute, which was referred, is beyond the terms of Schedule II, are of no avail for the simple reason that the notice Annexure 'A' dated 2-2-95, which has been placed on record, shows that it covers the items under Schedule II of the B.I.R. Act and this Notice has been given to the Textile Labour Association and when the Textile Labour Association, which is a representative Union, has not raised any grievance in this regard, the

petitioner-Union, having no locus standi in accordance with the provisions of the B.I.R.Act, can not be heard raising this sort of grievance for the purpose of challenging the impugned settlement and the Award recorded by the Industrial Court.

11. To me this Special Civil Application appears to be more a dispute between two Unions i.e. the petitioner-Union and the representative Union, rather than a challenge to the settlement as such. Mr. Patel has cited before me the decision of the Supreme Court in the case of Shramik Uttarsh Sabha v. Raymond Woolen Mills Ltd. and ors., reported in 1995-II-LLJ 301 wherein the legal position has been examined with reference to the various provisions contained in B.I.R.Act.

12. It is the trite law that so far as such industrial disputes are concerned, the whole scheme of the Industrial Disputes Act is to maintain or restore the industrial peace and for the purpose of settlement of such dispute, the principle of collective bargaining has to be applied. The best way to apply and enforce the principle of collective bargaining, as has been chosen, is to give right to represent the interest of workmen to a particular Union, which may be a representative Union. After all in such matters, each and every employee, or the member of a Union, which are there in a particular industry, can not be given preference over a representative Union and once the representative Union, based on the principle of collective bargaining, sits across the table with the employer and arrives at a particular settlement and the employees also go ahead to take the benefit of such settlement, it can not be left open for every working Union, which is not representative of the employees, to come and challenge such settlement, lest it would create chaos to maintain and restore industrial peace and harmony in the various establishments. It has become the fashion of the day with the rival Unions, which are working in the industrial establishments, seeking to challenge the settlements, which are arrived at through representative Unions, which represent the interest of the workmen in the eye of law. May be that in certain cases, where such Unions do not act fairly or to the utter disregard and detrimental to the interest of the workmen, where the questions of penalty of dismissal and removal of the workmen are involved or the case of criminal prosecution is there and the representative trade Unions appearing and acting on behalf of the workmen do not act effectively to represent the causes of such workmen, the Industrial Court or the Labour Court may give an

opportunity of hearing to the affected workman or a group of workmen so as to provide an opportunity to the workman or group of workmen to represent his or their causes effectively. In this regard, Mr. Shaikh also invited my attention to certain observations made in Para 40 in the decision rendered by the Division Bench of this Court in the case of Shrivankumar v. The Arvind Mills (Supra). However, I do not find that any such fact situation is obtaining in the present case and the arguments, which have been raised by Mr. Shaikh, do not find any factual foundation in the form of allegations in the body of the writ petition and the settlement, which is within the items of Schedule II, does not cover such exigencies, where such minimum opportunity can be granted as has been observed by the Division Bench in the aforesaid case of Shrivankumar v. The Arvind Mills. Therefore, it was not at all a case in which notice was necessary to the petitioner-Union and the representative Union-respondent No.2 has not raised any grievance in this regard. Thus, the principle of collective bargaining, through a representative Union, which flows as a fibre through out the Scheme of B.I.R. Act, has not at all been affected at any stage. The decision in Shrivankumar v. the Arvind Mills Ltd., on which reliance has been placed by Mr. Patel, also distinctly lays down that the objective of the provisions of the B.I.R. Act and the embargo placed upon representation by any one other than the representative of the employees is to recognize the first and exclusive right of the representative Union, except in matters pertaining to industrial dispute between the employer and the employees, so as to facilitate collective bargaining. The rationale is that it is in the interest of industrial peace in public and national interest that the employer should have to deal, in matters which concern all or most of its employees, only with the union, which is representative of them. It may be that a Union, which was representative of the employees, in the course of time has lost its representative character, but then it is open under the provisions of the B.I.R. Act for the rival Unions to seek to replace it. Be that as it may, it is not the function of this court to adjudicate upon the grievance, which one particular Union like the petitioner-Union may have against the representative Union and it is open for them to settle the scores amongst themselves, but the forum of this Court under Articles 226 and 227 of the Constitution of India cannot be used as a field for the purpose of settling down such scores.

13. Mr. Shaikh has also referred to a decision of Madhya Pradesh High Court in the case of Bhilai Steel

Employees Association v. A.W. Kanmadikar, reported in 1973 MPLJ 1025 : 1973 MPWR 581 by passing on a Commentary on Bombay Industrial Relations Act and Rules by Shri K.L.Sethi published in the year 1983 and to the Commentary under S.27A found in Item 1C at page 62. The actual report of the Madhya Pradesh High Court decision is not available but in the aforesaid Commentary under S.27A in the Book written by Shri K.L.Sethi it has been mentioned that, "Their Lordships of the M.P.High Court laid down that the worker is entitled to challenge the order of the Industrial Court under the provisions of Constitution provided in Articles 226/227, which are quite independent of the provisions of the M.P.Industrial Relations Act and there cannot be any bar on worker to seek such remedy." In this regard, it may be clarified that firstly the scope of S.27A has been discussed and the law has been laid down by our own High Court in the decision referred to herein-above in the case of Shrivankumar v. The Arvind Mills. Moreover, in absence of the actual report of the decision of the Madhya Pradesh High Court, the relevant provisions of the Act, under which the matter was dealt with by the Madhya Pradesh High Court, are not known. If an Award is passed in accordance with the provisions contained under a particular Act i.e. Bombay Industrial Relations Act, 1946 in the instant case, the validity of such Award, if sought to be challenged as being contrary to the provisions of such Act, the scope of consideration has also to be kept confined to the provisions of that Act and, therefore, when the B.I.R.Act, which is a special Statute, has specifically excluded the right of representation to the Unions other than representative Union, merely by raising the argument of the remedy available under articles 226 and 227 of the Constitution of India, the provisions of such special enactment can't be made defeasible and, therefore the petitioner, in the instant case, who has been totally excluded from the right of representation under the provisions of the Act, can not be taken to have any locus standi for the purpose of challenging the impugned settlement in terms of which the Award has been passed.

14. Accordingly the preliminary objection raised by Mr.Patel is sustained and the Special Civil Application is hereby dismissed. Rule is hereby discharged with no order as to costs.